



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STATE STREET RESTAURANT  
GROUP, INC.

v.

THE CINCINNATI CASUALTY  
COMPANY (incorrectly designated as  
THE CINCINNATI INSURANCE  
COMPANIES)  
and

ASSURED PARTNERS OF NEW  
JERSEY, LLC d/b/a KINCEL & CO.  
(incorrectly designated as  
KINCEL & COMPANY, INC.)

NO.: 3:20-cv-008160-RDM

**DEFENDANT ASSURED PARTNERS OF NEW JERSEY, LLC D/B/A  
KINCEL & CO.'S (INCORRECTLY DESIGNATED AS KINCEL &  
COMPANY, INC.) MOTION TO DISMISS PLAINTIFF'S COMPLAINT  
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant, AssuredPartners of New Jersey, LLC d/b/a Kincel & Co. (incorrectly designated as Kincel Company, Inc.) ("Kincel"), by and through its counsel, Marshall Dennehey Warner Coleman & Goggin, files this Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

Fed. R. Civ. P. 12(b)(6) provides for the dismissal of a Complaint for failure to state a claim upon which relief may be granted. The purpose of a 12(b)(6) motion is to test the legal sufficiency of the complaint and to "streamline litigation by dispensing with needless discovery and fact finding." Neitzke v. Williams, 490 U.S.

319, 326-27 (1989). To avoid dismissal under Rule 12(b)(6), a complaint must provide “enough factual matter” to allow the case to move beyond the pleading stage of litigation; the pleader must “nudge his claims across the line from conceivable to plausible.” Phillips v. Cnty. of Alleghany, 515 F.3d 224, 234-35 (3d Cir. 2008) (quoting Bell Atlantic Co. v. Twombly, 550 U.S. 544, 556 (2007)). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement’ to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555. “Threadbare recitals of the elements of a cause of action, supported by conclusory statements [are] not suffic[ient] to defeat a Rule 12(b)(6) motion to dismiss.” Ashcroft v. Iqbal, 556 U.S. 662 (2009).

For the reasons stated herein, as well as those reasons more fully articulated in Kincel’s Supporting Brief, to be filed in accordance with L.R. 7.5, and which is incorporated herein by reference, Kincel respectfully requests that this Honorable Court grant its Motion and dismiss, with prejudice, all claims asserted against Kincel in Plaintiff’s Complaint.

A Certificate of Movant is attached hereto.

Respectfully submitted,

**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN**

Date: May 26, 2020

BY: /s/ Timothy Ventura, Esquire  
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## CERTIFICATE OF MOVANT OF NONCONCURRENCE

Pursuant to United States District Court for the Middle District of Pennsylvania Local Rule 7.1, counsel for the moving party conferred with counsel for Plaintiff to determine whether Plaintiff concurs in the filing of this Motion to Dismiss Plaintiff's Complaint.

On May 26, 2020, counsel for the moving party sent an email to Plaintiff's counsel identifying the pleading deficiencies and requested concurrence in the filing of this Motion.

On May 26, 2020, counsel for the Plaintiff, absent word to the contrary, indicated that Plaintiff does not concur in the filing of the instant Motion.

Respectfully submitted,

**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN**

Date: May 26, 2020

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## CERTIFICATE OF SERVICE

I, Timothy G. Ventura, Esquire, do hereby certify that a true and correct copy of the Motion to Dismiss Plaintiff's Complaint on behalf of Defendant AssuredPartners of New Jersey, LLC d/b/a Kincel & Co. (incorrectly designated as Kincel & Company, Inc.) was electronically filed with the Court this date and is available for viewing and downloading from the ECF System.

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**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN**

Date: May 26, 2020

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